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IN THE

Supreme Court of the United States

October Term, 1943. No. 253.

ROBERT B. TWINING AND MILLICENT SYNG BUNTING COPE TWINING, AS NATURAL GUARDIANS OF ROBERT COPE TWINING AND LOUISE RITTENHOUSE TWINING, MINORS, MILLICENT SYNG BUNTING COPE TWINING, MARGARETTA PORTER COPE, CALEB COPE, 3RD, HENRIETTA BUNTING COPE, REMAINDERMEN, AND PORTER F. COPE, LIFE TENANT,

Petitioners,

vs.

LAND TITLE BANK AND TRUST COMPANY, TRUSTEE,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Pennsylvania, U.S.A.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA; AND BRIEF CONTRA PETITION.

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ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

To the Honorable, Harlan Fiske Stone, The Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The respondents respectfully represent:

SUMMARY CONTRA AND SHORT STATEMENT CONTRA.

1. Admitted.

2. Respondents aver that the statements set forth in this paragraph of the petition with respect to the quantum of the interests of the life tenants and remaindermen are incorrect and respectfully refer to the Deed of Trust. (R. 28, 29 & 30).

3. Respondents admit receiving, inter alia, an offer of $20,000 for the premises in question. They deny the re-acquisition of the premises to have been solely in lieu of foreclosures and aver the same to have been re-acquired also pursuant to a settlement. Respondents deny the re-acquisition cost to the trust to have been $77,000, and aver that said figure represents the difference, approximately, between the former sale price of the property, $125,000, and the cash proceeds of that sale, bearing in mind that the property in question at the inception of the Trust constituted the sole asset of the Trust.

It is admitted that petitioners opposed the sale. It is denied that said petitioners are interested to the extent of one half and that a one half interest approved the sale. It is averred that petitioners are the only opponents of the

sale, out of approximately twenty-five parties in interest in esse, and that the guardian ad litem appointed for the minor children of petitioners, Robert B. Twining and Millicent Cope Twining, his wife, approved the sale, as did the guardian ad litem for minor issue in the family tree of Caleb F. Cope, one of the life tenants.

It is admitted that the petition for sale at $20,000 as set forth in the petition and as amended, was referred to Robert T. McCracken, Esq., as Master. It is denied that the Learned Master concluded substantially or otherwise, that if the property were his he would not sell for $20,000, and further denied that the Learned Master concluded solely that because of the theory of apportionment of the proceeds, the property should be sold to protect remaindermen. We respectfully refer to the Record pages 230 to 238 for the Learned Master's Reasons for recommending the sale under the headings "Discussion" and "Findings of Fact."

4. Admitted as to the Appeal to the Supreme Court of Pennsylvania. It is denied that the said Court disregarded the reasoning of the Master (R. 272 and 273 for the reasoning of the Supreme Ct.). It is further denied that any Federal Question was then by said opinion raised or at any time before or since has been raised.

5. Admitted.

FEDERAL QUESTION.

6. There is no federal question involved in this case.

JURISDICTION.

Denied that there is any federal question involved in this case. It is admitted that the Constitutionality of the Revised Price Act of the State of Pennsylvania has not been decided in any reported case by the Supreme Court of the United States, so far as Respondents can ascertain. It is averred that the Constitutionality thereof has been decided by the Supreme Court of the State of Pennsylvania, and upheld in the cases of:

Grenawalt's Appeal, 37 Pa. 95 (1860);
Smith's Estate, 207 Pa. 604 (1904); 57 At. 37.

It is denied that the facts of this case represent a situation where the Court is ordering the property of one citizen transferred to another *in the absence of public interest or other reason.* For the *reasons,* see again the record under the Learned Master's "Discussion" and "Findings of Fact" (R. 230 to 238), and see also the opinion of the Supreme Court of the State of Pennsylvania (R. 272 and 273).

WHEREFORE, Respondents pray your Honorable Court to deny the certiorari prayed for and dismiss the petition, petitioners to bear the costs of this proceeding.

RASPIN, ESPENSHADE & HEINS,
By EDWIN S. HEINS,
Attorneys for Respondents.

BRIEF CONTRA PETITION FOR WRIT OF CERTIORARI.

AUTHORIZING THE SALE OF THE PROPERTY IN THE INSTANT CASE WAS NOT WITHOUT REASONS ON THE PART OF THE MASTER, THE TRIAL COURT AND THE SUPREME COURT OF THE STATE OF PENNSYLVANIA, WHICH HAVE BEEN RECOGNIZED AS VALID FOR THE EXERCISE OF THE POWER IN QUESTION.

The Petitioners' premise that the trial court and the Master decided to authorize the sale solely because of the apportionment theory is an entirely erroneous one and an assumption which the record by no means justifies.

We again refer to the "Discussion" and "Findings of Fact" of the Learned Master (R. 230 to 238) and to the opinion of the Supreme Court of the State of Pennsylvania. (R. 272 and 273).

The apportionment theory mentioned by petitioners is distinctly not at issue at this time. The fact, however, that there is a strong possibility that by that theory under the law of the State of Pennsylvania, the remaindermen may be entirely wiped out ultimately, by reason of the deficits in the operation of the property, was and certainly may be considered by the Master and Court as one among other reasons why the property should be sold and *sold for the protection of minor interests.* The exact amount of apportionment between life tenants and remaindermen does not have to be at issue for the existence of *this one* of the reasons for authorizing the sale. The fact that there is a very grave chance of its existence and consequent harm to minor remaindermen is a fair reason why it should be sold.

This is not the only valid reason why the Court ordered the property sold.

The life tenants are plainly, under the facts, receiving no income from the property and have received none for more than ten years, during which time a deficit in operation has accrued to the staggering sum of more than $8,000 (R. pp. 272 and 273). The property is about 80 years old, it is run down, and, with no assurance of income, large capital expenditures are necessary to put the property in condition. (R. 273). A reading of the record and especially the Report of the Master and the opinion of the Supreme Court shows unequivocally that there are many other reasons than the apportionment theory for the sale and hence petitioners' premise that the sale is without valid reasons, and that the apportionment theory was the only reason, and it was discarded, are entirely without foundation in fact.

16 C. J. S. Sect. 647 Sub. 6 "Authorizing Sale of Property";

Dickinson vs. Consolidated Tract. Co., C.C.N.J., 114 Fed. 232, affirming 191 F. 871, 56 C.C.A. 401, certiorari denied 24 S. Ct. 841, 191 U. S. 567, 48 L. Ed. 305.

Respectfully submitted,

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